S.86 - Miscellaneous changes in election laws
Prepared January 27, 2014 for hearing at House Government Operations
by Thomas Weiss
These comments refer to the bill as passed by the Senate (the 76-page unofficial version)

My testimony is mostly about the use of the vote tabulators and steps to assure that the tabulators are actually providing election results that accurately show the results of the voting. Vote tabulators can be and normally are quite accurate. However, they are machines and computers. As with any machine, any computer, they are subject to malfunction and subject to incorrect programming, whether intentional or unintentional. The bill as passed by the senate takes several important steps of improving our ability to confirm that the tabulators do indeed present the result correctly. However, I ask that you consider several additional steps to improve our ability to confirm that they are operating correctly.

In Vermont, we established the option of conducting what we call an audit of the tabulators after any election. I have observed all four audits. And I have observed two recounts. I related my observations on those audits to this committee back in February, 2013 before the topic was taken up in the Senate. My observation is that the audits are weak and can be improved.

First of all, I support the following provisions of the bill and ask that you retain them.
 - Leaving the decision to use vote tabulators with the voters. (Sec. 18, §2491 (a), p. 32)
 - Defining a vote tabulator(Sec. 2, §2103(43), p. 9)
 - Requiring audits of the vote tabulators (Sec. 17, §2493(a)(2)(A), p. 33)
 - Deleting references to "voting machine" and replacing them with "vote tabulator" (throughout)
 - Cleaning up obsolete statute dealing with the former voting machines used in Vermont (several places)
 - Strengthening the language requiring use of paper ballots and prohibiting casting votes on a machine. (Secs. 16 (§2478(e), p. 31); 17 (§2481, p. 32); and 18 (§2493(e), p. 35)).
 - Having immediate reporting of unofficial vote counts by means other than connecting vote tabulators to a centralized reporting system (sec. 29 (§2588(c)(1), p. 47)
 - Allowing warnings to be published on line while still requiring warnings to be published in newspapers.)Secs. 45, 46, 47, 49, and 50, pp. 61 - 64)

Secondly I ask for revisions on the procedures for recounts.
I ask that the use of vote tabulators for recounts be optional at the choice of the party requesting the recount. As written, the bill will require that all recounts be done by tabulator. There is no reason to believe that a recount using a vote tabulator with a duplicate of the memory card will come up with a different result than on election day. I think that we should take the time to recount by hand.

Requiring all recounts be done by tabulators raises the question of how the integrity of the recount is maintained for those towns where the ballots are counted by people. For those towns, at some time a memory card will need to be programmed for those towns to use in a recount. Then the question is when will that programming be done?
    - If before the election, then we will need to have the programming done for all hand-count towns, which will mostly be a waste of time and effort and lead to requiring all towns to count by vote tabulators in the elections themselves.
    - If after the election, then how is one assured that the programming has not been rigged? One would need to do on audit on the recount for each of the hand-counted towns, and not certify the recount until all of the audits have been completed, which seems like no savings in time.

The same question of integrity also applies when a municipality has already used the back-up card in the election itself and there is no back-up card available for the recount.

If the committee chooses to allow recounts by hand, then the relevant parts of existing statute will need to be retained. That means that §§2602 through 2602l in existing statute be retained and that those same sections in sec. 31 (pp. 49 - 54) be given different § numbers.

Thirdly, I ask for better definition of the procedures for audits of tabulators and sec. 19
I ask that you strengthen the audit procedures. I had hoped that this bill would actually have specified a stronger method for auditing of vote tabulators than the current procedures. Instead the bill requires the Secretary of State to develop proposed rules for using vote tabulators in recounts, for auditing tabulators, for certifying tabulators, and for requiring consultation with stakeholders. Unfortunately, one year has been lost in this process because this bill was not passed last year. This means that any audits for the 2014 elections will be done under the weaker provisions used to count ballots rather than a more rigorous procedure, such as the recount procedures (when done by people) or the risk-limiting audits.

I ask that if sec. 19 is retained that proposed procedures for auditing recounts be included in the report.

I believe that the purpose of an audit should be to prevent the wrong candidate from being certified. Thus I suggest that the audit be held before the election is certified. As it is now, if an audit finds an error in an election, the only thing that can be done is have the attorney general investigate. I ask that you add this as a definition of an audit in Sec. 2, §2103 (p. 7) or in sec. 19.

I have other suggestions for conditions and requirements for audits. If you choose to remove section 19 and add specific requirements, I'll ask to testify on them later. Otherwise, I am hopeful that the Secretary of State will consider me an interested stakeholder and I can make those suggestions when the Secretary holds his consultations under sec. 19.

I support the concept of public access to ballots after they are no longer needed for an election or challenge to the results. I also suggest that the bill have the secretary of state report on access to the ballots and tally sheets during some public inspection period. I suggest that access also be granted to any scans that are saved on the memory cards, to allow comparison of the scanned copies with the originals.

Fourthly, I ask for a stronger requirement for vote tabulators
Sec. 18, §2493(d) requires a vote tabulator to be a stand-alone device that is not connected to other devices or connections. One of the advantages that we have in Vermont is that our tabulators are stand-alone devices. Some of the problems reported in other states are due to the tabulators being connected. I ask that you strengthen this definition by deleting "shall not be connected" to "shall be incapable of being connected". This means that the tabulators would be delivered without jacks, wireless cards, and the like. (Sec. 17, §2493(d), p. 33)

Fifthly, I request widening the spread for requesting a recount
A few years ago the General Assembly reduced the spread for requesting a recount to 2%. I believe that was to reduce the number of recounts and their resulting time and expense. If you require that recounts be done by vote tabulator as provided in this bill, I ask that you return the spread to 5%.

Thank you for allowing me the time to testify today.